

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**

09-12-11  
04:59 PM

Application of James L. and Marianne S. Orvis to sell, and Aspen Forest Investment Co., LLC, To Buy, Five Thousand (5,000) Shares of the Common Stock of the water system known as Lake Alpine Water Company, Inc. (U148WTD) Located in Alpine County, California.

A.11-04-013

**EXPEDITED MOTION OF PAULA AND BRUCE ORVIS TO DISQUALIFY ATTORNEY DUE TO  
CONFLICT OF INTEREST**

Paula D. Orvis  
C. Bruce Orvis III  
2081 Fifth Green Dr.  
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September 12, 2011

Under the Commission's rules, I, Paula Orvis, representing myself before the CPUC as a protester in the Application of Aspen Forest, move to disqualify Thomas MacBride from representing Lake Alpine Water Company (LAWC) in A.11-04-013 on the basis that there is a conflict of interest. In support of this request, I declare:

1. I and my husband Bruce Orvis are 40% shareholders and two of five directors in LAWC.
2. In April 2011, Aspen filed an application for retroactive approval of its purchase of 50% of LAWC in 2003. My husband and I filed a protest to the Application on May 23, 2011.
3. At around the same time, a complaint was filed against LAWC and Aspen regarding the purchase of 50% of LAWC without Commission approval. Mr. MacBride answered the complaint on behalf of LAWC and Aspen without any prior approval of the LAWC Board of Directors. At a subsequent meeting of the Board of Directors on June 14, 2011, the issue of who was to represent LAWC against the complaint was first raised. The majority of the Board voted to have the same lawyer represent both Aspen and LAWC in the complaint proceeding.
4. The complaint was dismissed on the day of the June 14, 2011 Board meeting but the Aspen attorney continues to say he represents LAWC in the Application proceeding. As board members, my husband and I did not authorize Mr. MacBride to represent LAWC in the Aspen Application proceeding. My husband and I do not believe LAWC needs an attorney to participate in the Application proceeding because as we understand it, Aspen (not LAWC) was supposed to get Commission approval prior to the purchase of LAWC.
5. I raised the conflict of interest immediately, in a June 15, 2011 letter to Mr. MacBride, Aspen's lawyer. A copy of my letter is attached.
6. Mr. MacBride responded with the attached letter on June 22, 2011.
7. LAWC is not listed as a party on Aspen's Application seeking retroactive approval from the CPUC for Aspen's purchase of 50% of LAWC stock from Jim and Marianne Orvis in 2003.
8. I protested the setting up of a memorandum account via AL 94 to pass Aspen's legal costs onto LAWC. I also called a special meeting of the Board on August 2, 2011 to notify them that 50% of the shareholders (me, my husband and Roma Orvis) and two of the five board members did not feel comfortable with Mr. MacBride representing LAWC in addition to Aspen. Unfortunately, the LAWC

Board of Directors voted 3-2 (the two board seats held by Aspen and a third “independent” board member) to have LAWC pay Mr. MacBride’s bills that to date are over \$30,000. The supposed independent Board member said there might be a “minority conflict”, but voted to support the Aspen partners in passing these legal costs onto LAWC anyway.

9. I have contacted the State Bar of California for advice on this matter as I do not understand how Mr. MacBride can represent both Aspen and LAWC at the same time. If the Commission decides Aspen should have gotten prior permission to buy 50% of LAWC, then it seems to me LAWC should not have to pay for the attorney to represent Aspen for what it did wrong. In other words, how can the same attorney really represent LAWC when he is also helping the company (Aspen) who bought LAWC without following the Commission’s rules? I am also concerned that the attorney is getting information from LAWC employees, shareholders or directors that he is using to help Aspen in its Application and against me and my husband in our protest to Aspen’s application.
10. Although I have been troubled for some time that Mr. MacBride might have a conflict of interest, this week it seems to me there is no doubt. Mr. MacBride sent me a set of data requests about how my husband and I obtained stock in LAWC. If he truly was LAWC’s attorney (and therefore representing my interests as a board member and shareholder), why wouldn’t he call me to discuss these questions? If he truly was my attorney, why would he be asking questions that seem to challenge how I became a shareholder? I don’t believe I should have to give Mr. MacBride information that he can use against me or LAWC. Clearly, Mr. MacBride considers me to be an adversary in Aspen’s effort to defend itself for having bought 50% of the LAWC without getting prior CPUC approval.
11. Although Mr. MacBride included instructions in the discovery indicating that I must answer his questions, I am not comfortable doing that. I am asking the Commission to decide whether Mr. MacBride can represent LAWC before September 15, 2011, the date set by Mr. MacBride for me to answer his discovery questions.
12. For all of the reasons set forth above, I request an order disqualifying Mr. MacBride from representing LAWC in the Application of Aspen and preventing LAWC from having to pay any of the legal fees he has billed LAWC for representing Aspen. If LAWC requires the assistance of legal counsel, counsel should be independent.

I declare under penalty of perjury that all of the foregoing statements are true and correct to the best of my knowledge.

Respectfully submitted this 12th day of September, 2011 at Arnold, California.

/s/ Paula Orvis

C. Bruce Orvis III  
Paula D. Orvis  
PO Box 406  
Arnold CA 95223

By E-mail only: E-mail: [tmacbride@goodinmacbride.com](mailto:tmacbride@goodinmacbride.com)

June 15, 2011

GOODIN, MACBRIDE, SQUERI,  
DAY & LAMPREY, LLP  
Thomas J. MacBride, Jr.  
505 Sansome Street, Suite 900  
San Francisco, CA 94111  
Attorneys for Aspen Forest Investment Co., LLC

RE: LAWC, CPUC and Aspen Partners C-11—4-015 and A-11-4-013

Mr. McBride,

Yesterday at LAWC quarterly board meeting, we learned for the first time you were representing LAWC and Aspen Investment Partners in defense to the CPUC complaint filed by Gloria Dralla. I also know you are also representing Aspen Partners in their application to retroactively obtain approval to purchase Jim and Marianne Orvis' 50% of LAWC for \$275K in 2003 to which we have filed a protest.

When we raised the issue that you may have a conflict of interest in this matter at the Board meeting, we were voted down. Considering the fact that until the CPUC approves the transfer, this sale is considered void, we believe yesterday's vote regarding conflict to be null.

We are therefore asserting our belief you have a conflict in representing LAWC in any and all matters before the CPUC while you are representing Aspen Partners. We are also asserting that any and all fees you are charging for your services on behalf of LAWC will not be paid because of this conflict. We, as 40% shareholders in LAWC, will not waive any conflict of interest.

We request you immediately remove yourself as attorney of record for LAWC in any and all proceedings before the CPUC in which you also represent Aspen Investment Partners.

Thank you for your prompt attention to this matter.

Sincerely,

C. Bruce Orvis III  
Paula D. Orvis

GOODIN,  
MACBRIDE,  
SQUERI, DAY &  
LAMPREY, LLP

Thomas J. MacBride, Jr., Attorney at Law

June 20, 2011

*Via First Class & Electronic Mail (bporvis@juno.com)*

C. Bruce Orvis, III  
Paula D. Orvis  
P.O. Box 406  
Arnold, CA 95223

**Re: Case 11-04-015 and Application 11-04-013 (Aspen Partners; Lake  
Alpine Water Company)**

Dear Mr. & Mrs. Orvis:

I write in response to your letter of June 15, 2011 with regard to my participation in the two above-referenced matters before the California Public Utilities Commission. (As you may know, Administrative Law Judge Wilson has dismissed the Complaint in C.11-04-015 at the request of the Complainant, Ms. Dralla.)

The California Rules of Professional Conduct require that when representing a company rather than an individual, an attorney is to assume that his or her client is acting through the highest authorized officer overseeing the particular matter for which the attorney has been engaged.<sup>1</sup> That requirement has governed my representation of Lake Alpine Water Company ("LAWC") and Aspen Forest Investment Co., LLC ("Aspen") in the two matters before the Commission.

As the Reply to Protests in A. 11-04-013 and the Answer to the Complaint in C. 11-04-015 indicate, LAWC and Aspen share a common position on the principal legal and policy questions raised in the two dockets. Both are of the view that the 2003 stock sale did not effect a change in control of LAWC. Both assert that the public interest is best served by an order in A. 11-04-013 that does not disturb the current

<sup>1</sup> *Rule 3-600 Organization as Client*

(A) In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement.

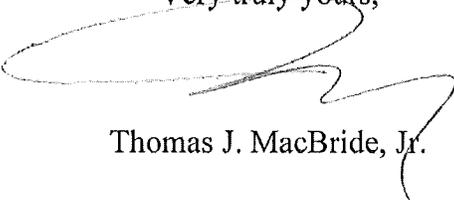
C. Bruce Orvis, III  
Paula D. Orvis  
June 20, 2011  
Page 2

management and ownership structure of LAWC. Accordingly, I cannot agree with your view that my representation of both entities raises a conflict of interest on my part.

Finally, your email to me of June 17, 2011 indicates that your letter was served on Administrative Law Judge Wilson who is assigned to both matters. Since your letter addresses a substantive issue in both cases<sup>2</sup>, it constitutes an "ex parte communication" as defined by Rule 8.1(c) of the Commission's Rules of Practice and Procedure. Ex Parte Communications are prohibited by statute<sup>3</sup> and Commission Rule<sup>4</sup> in adjudicatory proceedings such as C. 11-04-015. Since your email to ALJ Wilson predated dismissal of that matter, it contravened the Public Utilities Code and the Commission's Rules. Ex Parte Communications are permitted in ratesetting matters such as A. 11-04-013 if properly reported<sup>5</sup> as I will do with respect to this letter.

I recognize that you did not intend to violate any statute or Commission Rule and that following your communication with ALJ Wilson, C. 11-04-013 was dismissed. You may wish, however, to familiarize yourself with the Commission's Rules which can be found on its website.<sup>6</sup>

Very truly yours,



Thomas J. MacBride, Jr.

cc: ALJ Sean Wilson (via email - smw@cpuc.ca.gov)  
Annalissa A. Herbert (via email - ajh@cpuc.ca.gov)

3478/001/X129579.v1

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<sup>2</sup> Your letter states your view that the 2003 sale is void.

<sup>3</sup> Public Utilities Code Section 1701.2(b).

<sup>4</sup> Rule 8.3(b).

<sup>5</sup> Rule 8.3(c).

<sup>6</sup> www.cpuc.ca.gov.

ATTACHMENT

September 6, 2011

**Via First Class & Electronic Mail (bporvis@juno.com)**

C. Bruce Orvis, III  
Paula D. Orvis  
2081 5th Green Drive  
Arnold, CA 95223-0406

**Re: Application 11-04-013 (James L. and Marianne Orvis and Aspen Forest Investment Co., LLC)**

Dear Mr. & Mrs. Orvis:

As you know, this office is assisting both the Lake Alpine Water Company (“LAWC”) and Aspen Forest Investment LLC (“Aspen”) with regard to the above-referenced proceeding at the California Public Utilities Commission (“Commission”).

The purpose of this letter is to submit to you a Data Request seeking certain information that will assist us in our participation in the proceeding. A “Data Request” is a form of discovery employed in matters before the Commission. It is similar to discovery in civil cases but it is frequently conducted on a far more informal basis than that employed in civil court matters and I intend to do so here. Because my inquiries are simple in nature and limited in number, I am submitting questions to you without the formal boiler plate language found in court proceedings in order to assist you in providing your responses and to avoid unnecessary time and effort.

It is our understanding that in 2003, the two of you jointly owned 3,960 shares of LAWC at the time James and Marianne Orvis sold their shares. We understand that the shares you owned then were previously owned by Bruce and Roma Orvis but were transferred to you at some point prior to 2003. All but one of the questions set forth on the attached page seek clarification with regard to the transfer of those shares from Bruce and Roma Orvis to the two of you. We believe the questions are very straightforward but should you seek any clarification with regard to them, please feel free to give me a call.

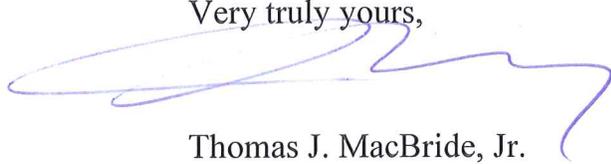
C. Bruce Orvis, III  
Paula D. Orvis  
September 6, 2011  
Page 2

I would appreciate it very much if you could provide responses to these questions by September 15, 2011. I would also appreciate it if your answers were numbered to correspond to the number of each question set forth on the attached page.

By answering them you are generally affirming that they are true and correct to the best of your knowledge.

With best wishes.

Very truly yours,



Thomas J. MacBride, Jr.

Encl.

3478/001/X131605.v1

**FIRST SET OF DATA REQUESTS TO  
PAULA ORVIS AND BRUCE ORVIS, III**

- Q. 1:** Please state the number of shares in the Lake Alpine Water Company (“LAWC”) that each of you owned in February of 2003.
- Q. 2:** Please state the date upon which each of you acquired the shares of LAWC that you owned in February of 2003. If you are unsure of the precise date, please provide your best estimate of the month and year in which you acquired the shares.
- Q. 3:** Please state how you acquired the shares you owned in February of 2003. In other words, did you purchase the shares or were the shares a gift or bequest to you? If a gift, please identify who made the gift to you. If a purchase, please identify the seller and the sales price. If the shares were provided to you in consideration of goods or services provided by you, please describe the goods and/or services you provided..
- Q. 4:** If you acquired the shares by gift, please state whether, to the best of your knowledge, if a gift tax return was filed with respect to the gift of shares to you. (Please note that we are not asking for a copy of any gift tax return filed.)
- Q. 5:** Subject to your confirmation of the source of the shares you acquired and the number of shares acquired, it is our understanding that the shares you acquired from Bruce and Roma Orvis represented approximately 79% of the shares then owned by Bruce and Roma Orvis. Please state whether either of you or Bruce and Roma Orvis filed any report, notice or application with the California Public Utilities Commission prior to the time you acquired the shares?
- Q. 6:** If you did not file an application or notice with the California Public Utilities Commission prior to acquiring the shares, please state why you did not do so.
- Q. 7:** Please provide us with copies of all documents and communications between either of you and any employee of the CPUC from 2002 to the present (including, without limitation, Commissioners and Commissioner’s Advisors) regarding or relating to the purchase of shares of Lake Alpine Water Company (“LAWC”) by any person.